

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LINO AGUILAR,

No C 10-3435 VRW

Plaintiff,

ORDER

v

ABM JANITORIAL SERVICES & DOES 1-
10,

Defendants.

Defendant ABM Janitorial Services - Northern California removed the above-captioned case from Alameda County superior court, alleging that plaintiff's claims for breach of contract and wrongful termination are preempted by section 301 of the Labor Management Relations Act (LMRA), 29 USC § 185. Doc #1 at 3-4. The LMRA completely preempts a state law claim when the claim requires the court to construe a provision of a collective bargaining agreement. Lingle v Norge Division of Magic Chef, Inc, 486 US 399, 405-407 (1988). "The need to interpret the [collective bargaining agreement] must inhere in the nature of the plaintiff's claim."

1 Cramer v Consolidated Freightways, Inc, 255 F3d 683, 691 (9th Cir
2 2001). The court may look beyond the pleadings to determine
3 whether plaintiff's state law claims are preempted by the LMRA.
4 Young v Anthony's Fish Grottos, Inc, 830 F2d 993, 997 (9th Cir
5 1987).

6 Plaintiff asserts two claims: (1) breach of contract and
7 (2) wrongful termination. Doc #1 at 11. Plaintiff alleges his
8 termination violated his seniority rights, which arose from his
9 membership in the Local 87 Service Employees International Union,
10 AFL-CIO. Id at 10. The allegations in the complaint do not
11 specify whether plaintiff was a union employee at the time of his
12 termination.

13 Defendant moves to dismiss the complaint and alleges that
14 plaintiff's union membership ceased when he became a supervisor in
15 1999. Doc #8 at 3. Plaintiff clarifies in his opposition to the
16 motion to dismiss that his claims are based on a non-union contract
17 incorporating his seniority from the Local 87's collective
18 bargaining agreement. Doc #18 at 4. Defendant attaches a copy of
19 plaintiff's employment contract; the contract makes no reference to
20 seniority or a collective bargaining agreement. Doc #21 Exh A.
21 Plaintiff's state law claims do not appear to require the court to
22 interpret the seniority provision of plaintiff's previous
23 collective bargaining agreement, and neither party argues that
24 interpretation of a collective bargaining agreement "inhere[s] in
25 the nature of" plaintiff's claims. Cramer, 255 F3d at 691.

26 Because defendant removed the case, defendant bears the
27 burden to show that plaintiff's claims are preempted by the LMRA.
28 Ethridge v Harbor House Restaurant, 861 F2d 1389, 1393 (9th Cir

1 1988). It is not apparent from the record that plaintiff's claims
2 are preempted or that the court otherwise has jurisdiction over the
3 case. Accordingly, defendant is ORDERED to SHOW CAUSE in writing
4 on or before December 15, 2010 why the case should not be remanded
5 to Alameda County superior court. The hearing scheduled for
6 December 9, 2010 is VACATED and will be rescheduled if necessary.

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8 IT IS SO ORDERED.

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11 VAUGHN R WALKER
12 United States District Chief Judge
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